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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1967

No. 445

AVCO CORPORATION, *Petitioner,*

v.

AERO LODGE NO. 735, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, ET AL.,
*Respondents.*

**On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit**

## BRIEF FOR RESPONDENTS

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**On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit**

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## BRIEF FOR RESPONDENTS

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### QUESTION PRESENTED

Whether an action brought in a state court for alleged breach of a no-strike promise in a collective bargaining agreement between an employer and a union representing employees in an industry affecting interstate commerce, in which the employer seeks a strike injunction, is removable to a federal district court in

that, as a Labor Management Relations Act § 301 action, it is within the "original jurisdiction" of the district court and is "founded on a claim or right arising under the . . . laws of the United States. . . ."

## STATEMENT

On October 15, 1965, petitioner filed a complaint in the Chancery Court for Davidson County, Tennessee, against Aero Lodge No. 735, International Association of Machinists and Aerospace Workers, nine individuals who held offices or lesser posts in the Union, and eleven individuals who were members of the Union (R. 2-3). The complaint alleged that: Petitioner at its plant at Nashville, Tennessee, manufactures and assembles major components for military aircraft under subcontract from prime contractors (R. 4-5). The Union is the exclusive bargaining representative of the 2,000 production and maintenance employees at the plant (R. 4-5). A collective bargaining agreement between the parties dated June 21, 1965 prescribes a method for settling grievances, including provision for binding arbitration (R. 5-6). Article IX of the agreement provides that: "Grievances are herein defined as any alleged violation of the terms of this Agreement or any difference of opinion arising as to its interpretation or application. Should any grievance, as defined herein, arise, there shall be no suspension of work and an earnest effort shall be made to settle such difficulties promptly in the manner hereinafter outlined" (R. 5-6). Article XIII of the agreement provides that: "During the life of this Agreement, no work stoppages, strikes or slow downs shall be caused or sanctioned by the Union and no lockouts shall be made by the Company" (R. 8).

The complaint further alleged that "members" of the Union engaged in a series of stoppages shortly after the effective date of the agreement (R. 6). On July 29, 1965 ten employees engaged in a stoppage because of their dissatisfaction with the reprimand of an employee (R. 6). On August 3, 1965 six employees walked off the job in protest against the use of tests for determining the eligibility of employees for promotion (R. 6). On August 11, 1965 fifty employees walked off the job, and on August 12, 1965 "numerous employees" engaged in a stoppage, to protest the termination of a probationary employee (R. 6). Two months later, on October 7 and 11, "a number of employees" failed to report, and on October 12 walked off the job, in a job classification dispute (R. 7). On October 14, 1965, 100 employees walked off the job to protest the presence of time study engineers in their work areas (R. 7). A plant-wide strike "of all or nearly all employees" began on October 15, 1965 (R. 7).

The complaint further alleged that "officers or committee men . . . were included in the groups of employees" engaged in the stoppages "on a majority of the occasions . . ."; that "in the walkouts of October 14 and . . . 15, officers, committee men, and other officials . . . were involved"; and "hence" the work stoppages and strikes were "sanctioned" by the Union (R. 8). Petitioner prayed that a "temporary injunction issue and be made permanent on the hearing" enjoining the defendants, "their members, associates, agents, and confederates," from engaging in or inducing, for the term of the collective bargaining agreement ending on June 20, 1968, "any suspension of work or any interruption of complainant's operations, and from acting individually, or in concert with others, to interfere with

the normal conduct of complainant's business at its plant at Nashville, Tennessee" (R. 9). Petitioner also prayed for "general relief" (R. 9).

The complaint was filed on the same day that the strike took place and an *ex parte* injunction was issued forthwith as prayed (R. 10), with no notice or opportunity to be heard extended to the Union or other defendants. The injunction ran not only to the Union and its agents, but to all members as well, and it ran to them not only when acting in concert, but also when acting individually (R. 9). The injunction was not limited to a suspension of work over matters submissible to the grievance and arbitration procedure. Nor was the injunction limited to a suspension of work, but extended to "any interruption of operations," and any interference with the "normal conduct" of business (R. 9).

On November 5, 1965 the Union and other defendants filed a petition with the United States District Court for the Middle District of Tennessee to remove the action, averring that (1) petitioner's activities affect interstate commerce and its employees are in an industry affecting interstate commerce, (2) the basis of the action is an alleged violation of a no-strike clause of a collective bargaining agreement between petitioner and the Union, and (3) the action is therefore founded on section 301 of the Labor Management Relations Act, 1947, and hence is within the jurisdiction of the federal court and arises under the laws of the United States (R. 11-12). On November 12, 1965, the Union and other defendants moved to dissolve the injunction and dismiss the action on the ground that the conduct complained of involves or grows out of a labor dispute and

the issuance of a strike injunction is barred by section 4 of the Norris-LaGuardia Act (R. 13). On February 2, 1966, the Union and other defendants moved, in the event the action were not dismissed, "to stay further proceedings therein for failure of the plaintiff to pursue the remedy of arbitration for the alleged violation of the agreement, as provided by Article IX of the Agreement . . ." (R. 15). Meanwhile, on November 18, 1965, petitioner had moved to remand the proceeding, urging that (1) the suit "is founded upon a claim of breach of contract arising under state law", and (2) by virtue of section 4 of the Norris-LaGuardia Act, the court "has no jurisdiction of said suit" (R. 14).

On March 2, 1966, the District Court denied the motion to remand (R. 17, 22). It held that the action arises under a law of the United States in that it is founded upon section 301 of the Labor Management Relations Act, 1947 (R. 18-19). ". . . [A]ll rights and claims resulting from a collective bargaining agreement in an industry affecting interstate commerce arise under federal law; state law does not exist as an independent source of private rights in regard to collective bargaining contracts" (R. 19). The District Court further concluded that the action was within its original jurisdiction (R. 19-22). It explained that "the mere fact that a prohibited labor injunction is among the remedies sought does not mean that a district court lacks original jurisdiction over the cause of action for the purpose of awarding other relief" (R. 19). In this case, the prayer asked for "general relief" in addition to an injunction, which is a sufficient basis "for awarding damages and, perhaps, for compelling specific performance of the arbitration provision" (R. 20-21); and, in any event, by reason of Rule 54(c) of the

Federal Rules of Civil Procedure, "a prayer for an injunction constructively acts as a prayer for all appropriate relief" (R. 21-22).[1]

Turning to the motion to dissolve the injunction and to dismiss the action, the District Court ruled that the motion to dissolve is well taken but the motion to dismiss is not, and it therefore denied the motion to dismiss but dissolved the injunction (R. 22). The *ex parte* injunction thus remained in force for four and one-half months before it was terminated.

The Court of Appeals affirmed (R. 38-48). As to the "arising under" prerequisite for removal, the court ruled that there is no law but federal law on which the action can be based (R. 41-42). As to the "original jurisdiction" prerequisite for removal, the Court ruled that the "Norris-LaGuardia Act does not deny to Federal Courts jurisdiction over the parties or subject matter" (R. 43), and that the preclusion of a strike injunction is a limitation upon the federal court's exercise of equity jurisdiction unrelated to subject matter jurisdiction (R. 43-45). "The strike against Avco gave rise to a single cause of action for which any number of different remedies were available" (R. 45),

---

[1] On a motion for reconsideration, petitioner urged that the District Court should not apply "federal procedure law" but "Tennessee law" in reading the complaint, and that under Tennessee law a prayer for general relief does not authorize the grant of any but injunctive relief (R. 23). In denying the motion, the District Court ruled that, even were it required to apply Tennessee law, under that law "a complainant who has prayed for general relief is entitled to any relief appropriate to the pleading and proof, whether or not he has specifically prayed for such relief . . . . The only exception to this rule is that relief so inconsistent with the special prayer as to take a defendant by surprise cannot be granted" (R. 36).

and a federal court is authorized to grant whatever relief is appropriate to redress the wrong whether the complaint asks for it or not (R. 45-46). The court concluded that (R. 47-48):

> If remand is granted, State Courts would become the preferred forum for adjusting breaches of no-strike clauses in collective bargaining agreements in industries affecting interstate commerce. Not only would this undermine a uniform development of the law, but the availability and effectiveness of the injunctive remedy would vary from State to State. Consequently, in order to achieve this uniformity of application, the remedies available in State Courts are limited to the remedies available under Federal law.
>
> Avco's claim arises under the laws of the United States, and the complaint states an action over which the District Court had original jurisdiction. Federal labor policy must have uniform application. The Congress has declared that injunctions shall not issue to restrain peaceful picketing.

## SUMMARY OF ARGUMENT

### I

Removal is mandatory upon a defendant's petition whenever the action is within the "original jurisdiction" of the federal court and is founded on a claim "arising under" the laws of the United States. Each prerequisite is easily satisfied in this case.

An action for breach of a collective bargaining agreement in an industry affecting interstate commerce is based on, and can only be based on, section 301 of the Labor Management Relations Act, 1947. Section 301 is the sole source of right that petitioner can invoke. Federal law is the exclusive determinant of the validity,

interpretation, and enforcement of the contract which petitioner alleges has been violated. The action therefore is one "arising under" a law of the United States.

A § 301 action is within the "original jurisdiction" of the federal court. The argument to the contrary is based exclusively on the proposition that jurisdiction is lacking because the federal court is without authority by reason of the Norris-LaGuardia Act to issue a strike injunction as one remedy available to the court should it find a contract violation. The argument confuses subject matter jurisdiction (the power to entertain a claim of contract violation) with equity jurisdiction (the authority to grant a particular form of relief to redress a well-founded claim). This distinction between subject matter jurisdiction and equity jurisdiction is central to this case and fatal to petitioner's position.

We begin with the obvious. A federal district court is empowered to decide an action in which the claim made is the violation of a labor contract. Once determined that a violation has occurred a whole host of remedies is available to the court to redress the breach. Dependent on the relief appropriate to right the wrong, the court may compel specific performance of a promise to arbitrate, enforce or vacate an arbitration award, grant compensatory damages, render a declaratory judgment, or decree other proper redress. Plainly subject matter jurisdiction exists, and it does not disappear simply because the sole relief which a particular claimant may choose to seek is a strike injunction which the court is not authorized to grant. "Whether a suitor is entitled to equitable relief in the federal courts, other jurisdictional requirements being satisfied, is strictly

not a question of jurisdiction in the sense of the power of a federal court to act. It is a question only of the merits; whether the case is one for the peculiar type of relief which a court of equity is competent to give." *DiGiovanni* v. *Camden Fire Insurance Assn.*, 296 U.S. 64, 69.

The Norris-LaGuardia Act fits the distinction between subject matter and equity jurisdiction to perfection. Its terms, content, and structure show clearly that its restrictions pertain, not to the power of the court to entertain the controversy, but to the manner in which its power shall be exercised. The public policy which it declares is substantive labor policy. Its definition of a labor dispute, extending its bounds beyond disputants standing "in the proximate relation of employer and employee", expresses the operative sphere of the Act in terms of the industrial realities avowed in its statement of public policy. The outlawry of the yellow dog contract, and the prescription of standards for imposing vicarious responsibility, have direct substantive import. The safeguards which surround the grant of injunctive relief entwine purely procedural reform, traditional equity practice, and substantive considerations of sound labor policy. The description of nonenjoinable acts is carefully qualified in terms of "lawful means", absence of "fraud or violence", and "peaceably" conducted.

The entirety of the Norris-LaGuardia Act therefore bespeaks, not divestiture of power to entertain the controversy, but circumscription of the manner that the power shall be exercised. It relates to equity jurisdiction, just as this Court has related other statutes to equity jurisdiction in which the limiting command ad-

dressed to the federal court is at least as peremptory as the Norris-LaGuardia Act. The term "jurisdiction" in the Norris-LaGuardia Act "refers to right principles of judicial action and not to power." Chafee, Some Problems of Equity, 372 (1950). As this Court has stated, speaking through Mr. Justice Frankfurter, when the Norris-LaGuardia Act is interposed as an objection to the grant of injunctive relief in a federal district court, "the question is whether the complaint subjects that court to the limitations imposed by the Norris-LaGuardia Act upon its *equity jurisdiction.*" *Bakery Sales Drivers Union* v. *Wagshal,* 333 U.S. 437, 439 (emphasis supplied).

A § 301 action therefore meets the "original jurisdiction" and "arising under" prerequisites for removal. And removal of a § 301 action fits the purpose of Congress in making federal question removal available to a defendant. Without removal the federal questions presented in § 301 actions brought in state courts will be decided by state courts that may be inhospitable to or unaware of national labor policy. Federal law will be fashioned without the sustenance of federal courts and correction of state errors in the federal area will have to await the necessarily limited attention that this Court can devote to this burgeoning field. Removal is Congress' solution when the civil action begun in a state court is within the "original jurisdiction" of a federal district court and "founded on a claim or right arising under the . . . laws of the United States. . . ." 28 U.S.C. § 1441(b). A § 301 action meets these two prerequisites and removal on the defendant's petition is therefore mandatory.

## II

Resistance to removal stems exclusively from this Court's decision in *Sinclair Refining Co.* v. *Atkinson,* 370 U.S. 195, that a federal court is precluded from issuing an injunction to restrain a strike over a grievance which is submissible to arbitration under a collective bargaining agreement. But displeasure with *Sinclair* has legally nothing to do with removal. Removal is mandatory on the defendant's petition if the "original jurisdiction" and "arising under" prerequisites are satisfied. They are in this case. Nothing else is relevant. The supposed availability of a strike injunction in a state court is beside the point. "The Federal court may . . . be obliged to deny an equitable remedy which the plaintiff might have secured in a state court." *Pusey & Jones Co.* v. *Hanssen,* 261 U.S. 491, 498. The civil action does not on that account cease to satisfy the "original jurisdiction" and "arising under" requirements. Accordingly, "even if the Norris-LaGuardia Act is considered operative only as a restriction on exercises of the federal equity jurisdiction, so that the state courts are thought free to grant injunctions in labor cases otherwise and substantively governed by federal law, that difference in equity jurisprudence between the two systems is not a ground for denying the right to remove." *Crestwood Dairy* v. *Kelley,* 222 F. Supp. 614, 617 (E.D. N.Y.); *Publishers' Association* v. *Printing Pressmen's Union,* 246 F. Supp. 293, 296 (S.D. N.Y.).

Petitioner's irrelevant proposition that a state court has power to issue a strike injunction in a § 301 action is in any event erroneous. Analysis must begin with acceptance of *Sinclair* as the law. This means that

there is no longer room for the argument that "injunctions against peaceful strikes are necessary to make the arbitration process effective. . . . [W]hatever might be said about the merits of this argument, Congress has itself rejected it. In doing so, it set the limit to which it was willing to go in permitting courts to effectuate the congressional policy favoring arbitration and it is not this Court's business to review the wisdom of that decision." *Sinclair,* 370 U.S. at 213. Accordingly, given *Sinclair,* all that is properly left for decision is the question whether, although Congress determined that a strike injunction should not be grantable in a § 301 action in a federal court, it nevertheless concluded that the identical injunction should be grantable in an identical action in a state court. Congress did not legislate that idiosyncratic disparity.

1. The principle which governs in a § 301 action, whether brought in a state court or a federal court, is uniform application of paramount federal law. Uniformity is the desideratum of national labor policy and fits the ideal of the evenhanded rule of law. And there can be no uniformity if a strike injunction is unavailable in a federal court but obtainable in a state court in a § 301 action. The disparity is not limited to state courts and federal courts vis-a-vis each other. There is no uniformity from one state court to another. Strike injunctions are grantable in some state courts but not in others. The allowability of a strike injunction in a state court would therefore make for a crazy quilt hopelessly destructive of uniformity.

2. The uniformity which this Court's decisions have stressed as essential in § 301 actions is not limited to the substantive interpretation of the contents of the

collective bargaining agreement but extends to procedure and remedy as well. This Court requires the specific performance of an executory promise to arbitrate; it has established the rule that, while an individual employee has standing to maintain a § 301 action, he may not do so if he has not attempted to exhaust the grievance and arbitration procedure, and not even then unless the union has defaulted in its duty of fair representation; it holds that a § 301 action is maintainable despite the availability of an alternative remedy from the National Labor Relations Board; it *requires that* procedural arbitrability be determined by the arbitrator; and it has formulated the principle which governs the apportionment of damages when an employer has breached the collective bargaining agreement and the union has violated its duty of fair representation. Obviously, although these rules are clearly "procedural" or "remedial," a state court is not empowered to apply different rules in a § 301 action.

Accordingly, uniformity is essential with respect to all meaningful aspects of a § 301 action whether denominated "substantive," "procedural," or "remedial." Indeed, the procedure by which a right is realized and the remedy by which it is vindicated may well be more important than its substantive definition. And that is plainly true of a strike injunction in a labor dispute. The fact is, "noted by all competent students of industrial relations, that in labor disputes the injunction remedy is inextricably linked with the rights of the parties involved; a strike may be won or lost, depending upon whether the employer's application for a temporary injunction or a temporary restraining order succeeds or fails. . . . Thus, to deny employers the injunctive remedy in Section 301 cases brought in fed-

eral courts, while permitting them to obtain that remedy in similar actions brought in state courts, would be to cause a marked disparity between the substantive rights of litigants under a law which purports to establish a common rule for all."[2]

3. Nor will it do to contend that, as the Norris-LaGuardia Act is applicable to federal courts but not to state courts, its limitations are irrelevant to a § 301 action brought in a state court. The Norris-LaGuardia Act expresses national labor policy and its equitable restrictions have substantive import. And it expresses national policy even if its focus is thought to be entirely procedural. The preliminary issuance of a strike injunction determines the outcome of the strike without regard to an ultimate determination that the strike was or was not substantively rightly enjoined. The drastic effect of the so-called temporary remedy practically moots the substantive question of the right to the relief. And this of course was a principal evil against which the Norris-LaGuardia Act was aimed. It remains an evil to this day; it is an evil in a § 301 action no less than in any other labor dispute; and the national labor policy expressed in the Norris-LaGuardia Act which does not allow the evil to manifest itself in a federal court does not tolerate it in a state court in a § 301 action. When the crux of the action is the enforcement of a federal right, a state court is not empowered to do what a federal court is debarred from doing. A strike injunction is not grantable in a § 301 action in any court, state or federal, not because the Norris-LaGuardia Act applies to state courts,

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[2] Aaron, *Strikes in Breach of Collective Agreements: Some Unanswered Questions*, 63 Colum. L. Rev. 1027, 1035-36 (1963).

but because that Act defines federal policy with respect to the enforcement of federal labor contracts.

4. Petitioner's pervasive theme is that Congress, in enacting § 301 to strengthen the enforcement of collective bargaining agreements, could not have meant to weaken existing remedial authority by disallowing the issuance of strike injunctions by state courts to enjoin strikes in breach of no-strike promises. But, as *Sinclair* holds, Congress rejected the argument that the availability of a strike injunction was necessary to the efficacious enforcement of a no-strike promise. Given *Sinclair,* and its conclusion that Congress repudiated the view that "injunctions against peaceful strikes are necessary to make the arbitration process effective" (370 U.S. at 213), there is no room for the identical argument just because the § 301 action is brought in a state court rather than a federal court.

Furthermore, were the issue still open, it is hardly datum that a strike injunction is important to secure performance of a no-strike promise. The overall incidence of strikes over grievances submissible to arbitration is doubtless quite small, so that in perspective we deal with a fairly minor matter. Furthermore, insofar as legal sanctions promote performance of a no-strike promise, the employer is free to discharge or discipline strikers and their leaders, and compensatory damages are recoverable—hardly inconsiderable deterrents to unauthorized strike action. In addition, as most strikes in breach of a no-strike promise are wildcat in character and therefore unauthorized by the union, and which the union is already doing its best to stop, a strike injunction directed to the union adds nothing to its efforts to bring the strike to an end, and a strike

injunction directed to the men requiring them to return to work against their will is of doubtful constitutional validity and of uncertain practical use. To the probable needlessness and inefficacy of a strike injunction as a sanction there must also be added the known abuse to which the strike injunction has been and will be put however abstractly just the cause in which it is enlisted.

Perhaps more fundamental than these considerations, however, is the fact that the system of agreed submission of grievances to arbitration and the concomitant adherence to a no-strike promise is not dependent on the availability of legal sanctions to make it work and is not repairable by legal sanctions if it does not work. Despite the legal underpinnings provided by § 301, adjustment of contract claims through the grievance and arbitration procedure without strikes is essentially an autonomous system of self-government which draws its sustenance from the self-determined commitment of the parties to it. Viewed in this light the availability of a strike injunction is almost an irrelevancy.

All this suggests that the problem, if one exists, and a solution, if one is desired, is for Congress. This is especially so in view of the fact that, in the five and one-half years since *Sinclair,* Congress has not been persuaded to change the *Sinclair* rule, and has not acted on bills designed to modify it. Judges should be slow to respond to a controversial claim of what the common-weal supposedly requires when the legislators are content to leave well enough alone. Congress sits as well as this Court.

## ARGUMENT

An action brought in a state court is removable to a federal district court when it is within the "original jurisdiction" of the federal court and is founded on a claim or right "arising under" a law of the United States. We shall show that a § 301 action meets each of these two prerequisites, and nonetheless so because the sole relief requested by the plaintiff is a strike injunction, and that therefore removal is mandatory on the defendant's petition. We shall further show that the unavailability of a strike injunction in a federal court in a § 301 action when the suit is removed, and the supposed availability of a strike injunction in a state court in a § 301 action if the suit is not removed, are each irrelevant to removal. This case, accordingly, presents no question as to whether a state court is empowered to issue a strike injunction in a § 301 action. We shall finally show that, if that question is reached, the answer is clear that a state court, like a federal court, is precluded as a matter of federal law from issuing a strike injunction in a § 301 action.

### I. THE ACTION IS REMOVABLE FROM THE STATE COURT TO THE FEDERAL DISTRICT COURT

#### A. The Action Is "Founded on a Claim or Right Arising Under the Constitution, Treaties or Laws of the United States. . . ."

One prerequisite of nondiversity or federal question removal is that the action be "founded on a claim or right arising under the Constitution, treaties or laws of the United States . . . ." 28 U.S.C. § 1441(b). That prerequisite is incontestably satisfied in this case. This action is based on, and can only be based on,

section 301(a) of the Labor Management Relations Act, 1947. As a suit for violation of a contract "between an employer and a labor organization representing employees in an industry affecting commerce . . .," section 301(a) is the sole source of right that petitioner can invoke to support its claim. Federal law is the exclusive determinant of the validity, interpretation, and enforcement of the contract which petitioner alleges has been violated.

This is settled law. The "substantive law to apply in suits under § 301 (a) is federal law which courts must fashion from the policy of our national labor laws . . . . Federal interpretation of the federal law will govern, not state law . . . : But state law, if compatible with the purpose of § 301, may be resorted to in order to find the rule that will best effectuate the federal policy . . . . Any state law applied, however, will be absorbed as federal law and will not be an independent source of private rights." *Textile Workers Union* v. *Lincoln Mills,* 353 U.S. 448, 456-457.

While suit to enforce the federal right may be brought in a state court (*Charles Dowd Box Co.* v. *Courtney,* 368 U.S. 502), the state court must apply federal law in the determination of the controversy (*Local 174, Teamsters* v. *Lucas Flour Co.,* 369 U.S. 95). "The dimensions of § 301 require the conclusion that substantive principles of federal labor law must be paramount" (*id.* at 103); "issues raised in suits of a kind covered by § 301 [are] to be decided according to the precepts of federal labor policy" (*ibid.*); "the subject matter of § 301(a) 'is peculiarly one that calls for uniform law' " (*ibid.*); "The importance of the area which would be affected by separate systems

of substantive law makes the need for a single body of federal law particularly compelling" (*id.* at 104); and so, "in enacting § 301 Congress intended doctrines of federal labor law uniformly to prevail over inconsistent local rules" (*ibid.*). Accordingly, an "action . . . arising under § 301 . . . is a case controlled by federal law, . . . even though brought in the state court." *Humphrey* v. *Moore,* 375 U.S. 335, 344-345. In short, whether the action is begun in a state or federal court, "§ 301 has substantive content and . . . Congress has directed the courts to formulate and apply federal law to suits for violation of collective bargaining contracts." *Smith* v. *Evening News Association,* 371 U.S. 195, 199. See also, *Local Union No. 721, Packinghouse Workers* v. *Needham Packing Co.,* 376 U.S. 247, 250.

Accordingly, *assuming* a state court could grant a strike injunction in a § 301 action—an erroneous proposition which is at the forefront of petitioner's argument but which is not analytically even present as a question in this case (*infra,* pp. 44-45)—it would be only because *federal* law authorizes the grant of this remedy by a state court. Thus, state limitations statutes apply in determining whether a § 301 action is time-barred, but solely because this is the federal rule which has been fashioned in answering the federal question of timeliness. *International Union, Automobile Workers* v. *Hoosier Cardinal Corp.,* 383 U.S. 696. The "timeliness of a § 301 suit . . . is to be determined, *as a matter of federal law,* by reference to the appropriate state statute of limitations" (*id.* at 704-705, emphasis supplied). So here, were it true that a state court would be empowered to issue a strike injunction in a § 301 action, it could do so only because it was allowable

as a matter of federal law. *Cf.; United States* v. *Yazell,* 382 U.S. 341, 356-357, and n. 34.[3] Federal law exclusively controls. There is no residue of independent state law operating free of federal governance. *John Wiley & Sons* v. *Livingston,* 376 U.S. 543, 548.

There is, therefore, no room for petitioner's view that "a suit filed in a state equity court seeking injunctive relief should be held to arise under the laws of that State and not under the laws of the United States" (Pet. br. p. 36). The "Labor Management Relations Act § 301 contract . . . is a federal contract and is therefore governed and enforceable by federal law. . . . " *International Association of Machinists* v. *Central Airlines,* 372 U.S. 682, 692. In an action on such a contract "we are not dealing with a suit involving an aspect of federal law which is only collateral or remote or a case where state and federal laws are so blended as to present a serious question of the scope" of federal question jurisdiction. *Id.* at 695-696. On the contrary, federal law enters the case with the petitioner and is the only law which it can invoke to support its claim of a contract violation. "That an action arises under federal law if the plaintiff asserts a federally-created cause of action seems plain." Hart and Wechsler, The Federal Courts And the Federal System, 763 (1953). It is therefore crystal clear that the action in this case is "founded on a claim or right arising under the . . . laws of the United States . . . ." 28 U.S.C. § 1441(b).

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[3] See also, Hart, *The Relations Between State and Federal Law,* 54 Colum. L. Rev. 489, 529-530 (1954).

**B. The Action Is One "Of Which the District Courts Have Original Jurisdiction. . . ."**

The companion prerequisite for removal is that the action be one "of which the district courts have original jurisdiction . . . ." 28 U.S.C. § 1441(b). The crux of petitioner's argument is that a federal district court is without "original jurisdiction" over an action for breach of a collective bargaining agreement because it is without authority by reason of the Norris-LaGuardia Act to issue a strike injunction as one remedy available to the court should it find a contract violation. The argument confuses subject matter jurisdiction (the power to entertain a claim of contract violation) with equity jurisdiction (the authority to grant a particular form of relief to redress a well-founded claim). ". . . [W]hen ordinarily speaking of the 'equity jurisdiction' we do not thereby refer to the general power inherent in a court to decide the controversy at all,—a power so essential that its absence renders the decision a mere nullity, but we intend by that phrase to describe some more special and limited judicial authority." 1 Pomeroy's Equity Jurisprudence 176 (5th ed., Symons, 1941).

This distinction between subject matter jurisdiction and equity jurisdiction is central to this case. By § 301 Congress invested federal district courts with subject matter jurisdiction over labor contract violation suits; it did so in the exercise of its power under the Commerce Clause (*Textile Workers Union* v. *Lincoln Mills*, 353 U.S. 448, 457); related to the terms of the general federal question jurisdiction conferred by 28 U.S.C. § 1337, the federal district courts have "original jurisdiction" because a § 301 suit is a civil action or proceeding arising under an "Act of Congress regulating

commerce . . ."; and the "original jurisdiction" defined by 28 U.S.C. § 1337 is identical with the "original jurisdiction" required for removal by 28 U.S.C. § 1441(b).[4] In exercising its original jurisdiction, a strike injunction is not within the arsenal of remedies available to a federal district court in a suit over a labor contract violation claim, but that constitutes a limitation upon the court's equity jurisdiction, not referable to subject matter jurisdiction and therefore not relevant to removal. *Venner* v. *Great Northern Ry. Co.*, 209 U.S. 24, 33-35.

**1. The preclusion of a strike injunction as an equitable remedy is a limitation of equity jurisdiction and not a divestiture of subject matter jurisdiction**

We begin with the obvious. A federal district court is empowered to decide an action in which the claim made is the violation of a labor contract. The threshold determination required of the court is whether a contract exists and has been breached. No question of the relief available is presented until it is first found that a wrong has been committed. Once determined that a violation has occurred a whole host of remedies is available to the court to redress the breach. Dependent upon the relief appropriate to right the wrong, the court may compel specific performance of a promise to arbitrate (*Textile Workers Union* v. *Lincoln Mills*, 353 U.S. 448), enforce or set

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[4] ". . . [I]n general, removal is keyed to original jurisdiction." 1 Moore's Federal Practice, 662 (2d ed. 1964). "The present pattern of removal jurisdiction was fixed by the Judiciary Act of 1887. . . . For the first time the requirements of removal jurisdiction, under the general removal provision, were expressly tied together with those for original jurisdiction." Hart & Wechsler, The Federal Courts and the Federal System, 1019-20 (1953).

aside an arbitration award (*United Steelworkers* v. *Enterprise Wheel and Car Corp.*, 363 U.S. 593), grant compensatory damages (*Atkinson* v. *Sinclair Refining Co.*, 370 U.S. 238), render a declaratory judgment,[5] or decree other proper redress. Any such action begun in a state court is removable to the federal district court, whether the relief ultimately grantable is specific performance,[6] confirmation or vacation of an award,[7] or money damages.[8]

The existence of subject matter jurisdiction to decide labor contract violation disputes is therefore clear. Thus the whole of petitioner's argument strips down to the assertion that, while a federal district court is empowered to decide the merits of an underlying claim that a contract breach has occurred upon which the grant of any relief is dependent, subject matter jurisdiction disappears if the sole relief that the claimant seeks is a strike injunction which the court is not authorized to grant. This formulation makes federal question jurisdiction turn, not upon the power of the court to decide the claim which is the foundation

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[5] *El Paso Bldg. Trades Council* v. *El Paso Chapter*, 376 F. 2d 797, 799-800 (C.A. 5); *Allied Oil Workers Union* v. *Ethyl Corp.*, 341 F. 2d 47, 49 (C.A. 5); *Black-Clawson Co.* v. *I.A.M.*, 313 F. 2d 179, 181-182 (C.A. 2).

[6] *Johnson* v. *England*, 356 F. 2d 44, 46-48 (C.A. 9); *Fitchburg Paper Co.* v. *MacDonald*, 242 F. Supp. 502 (Mass.).

[7] *Kracoff* v. *Retail Clerks, Local Union No. 1357*, 244 F. Supp. 38 (E.D. Pa.); *Central Metal Products* v. *International Union, U.A.W., Local 1249*, 195 F. Supp. 70 (E.D. Ark.); *Minkoff* v. *Scranton Frocks*, 172 F. Supp. 870 (S.D. N.Y.); *Ingraham Co.* v. *Local 260, I.U.E.*, 171 F. Supp. 103 (D. Conn.).

[8] *Patriot-News Co.* v. *Harrisburg Printing Pressmen*, 191 F. Supp. 568 (M.D. Pa.); *Fay* v. *American Cystoscope Makers*, 98 F. Supp. 278 (S.D. N.Y.); *Chapman* v. *Southeast Region I.L.G.W.U. Health & Welfare Recreation Fund*, 265 F. Supp. 675 (D.S.C.).

for any relief, but upon the particular form of relief that the suitor chooses to seek. This cart-before-the-horse approach is meritless.

"'The right to bring a suit is entirely distinguishable from the right to prosecute the particular bill. One goes to the maintenance of any action; the other to the maintenance of the particular action.'" *Venner* v. *Great Northern Ry. Co.*, 209 U.S. 24, 35. A statutory limitation upon "remedy . . . goes to the merits of the matter, and not . . . to the question of jurisdiction." *Sperry Gyroscope Co.* v. *Arma Engineering Co.*, 271 U.S. 232, 235. "Whether a suitor is entitled to equitable relief in the federal courts, other jurisdictional requirements being satisfied, is strictly not a question of jurisdiction in the sense of the power of a federal court to act. It is a question only of the merits; whether the case is one for the peculiar type of relief which a court of equity is competent to give." *DiGiovanni* v. *Camden Fire Insurance Assn.*, 296 U.S. 64, 69. "The Federal court may therefore be obliged to deny an equitable remedy which the plaintiff might have secured in a state court. . . . The objection that the bill does not make a case properly cognizable in a court of equity does not go to its jurisdiction as a Federal court." *Pusey & Jones Co.* v. *Hanssen*, 261 U.S. 491, 498, 500. "By jurisdiction we mean power to entertain a suit, consider the merits and render a binding decision thereon; *and by merits we mean the various elements which enter into or qualify the plaintiff's right to the relief sought.*" *General Investment Co.* v. *New York Central Railroad Co.*, 271 U.S. 228, 230 (emphasis supplied).

And so, in this case, the preclusion of a strike injunction goes merely to the "right to the relief sought";

it is a determination of absence of merit as a matter of equity jurisdiction; it is not referable to subject matter jurisdiction. The petitioner turns the analysis upside down when it looks to the right to the particular relief sought rather than to the power to decide the underlying claim upon which the right to any relief is dependent as the determinant of subject matter jurisdiction. This essential distinction between the power to decide the underlying claim and the appropriate relief grantable if the claim is after adjudication determined to be well-founded is explicit in the Federal Rules of Civil Procedure. Rule 54(c) provides that "every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings." "While . . . every pleading setting forth a claim for relief should contain a demand for judgment, this prayer for relief constitutes no part of the pleader's cause of action; . . . the prayer does not limit the relief, legal and/or equitable, which the court may grant." 6 Moore's Federal Practice 1202-04 (2d ed. 1966); and see, *id.* at 1207-11. A "party praying for coercive relief may be entitled to relief by declaratory judgment, or other appropriate relief." *Id.*, 1966 Cum. Supp. 67.

The order of the District Court in this case was fashioned with exact and meticulous regard for this essential distinction between subject matter and equity jurisdiction. Upon denial of petitioner's motion to remand, and acting on respondent's motion "to dissolve the temporary injunction . . . and to dismiss the case" (R. 13), the court ruled that "the motion to dissolve the injunction is well taken and that the motion to dismiss the action is not well taken" (R. 22).

It therefore ordered that "the motion to dismiss the action is denied, and . . . that the injunction heretofore issued . . . is . . . dissolved" (R. 22).

To be sure, if a party chooses to restrict himself to the one form of relief not within the court's authority to grant, and refuses to proceed to secure grantable relief if his claim is well-founded, it would be pointless for the court to exercise its power to adjudicate the controversy. Courts do not sit to force unwanted relief upon a party.[9] But the consequence of the party's obduracy is that he has deprived himself of relief. He has not deprived the court of its jurisdiction. A party may be the master of his pleading. He is not the master of the court's jurisdiction.

Any other view simply invites action-splitting procedural jugglery. For example, in *American Dredging Co.* v. *Local 25, Marine Division,* 338 F. 2d 837 (C.A. 3), reversing, 224 F. Supp. 985 (E.D. Pa.), cert. denied, 380 U.S. 935, the Court of Appeals for the Third Circuit was apparently of the view that an action brought in a state court would be removable if the complaint sought both an injunction and damages (338 F. 2d at 839, n. 8, 9th and 10th paragraphs),[10] and it was therefore at pains to point out that the complaint before it sought injunctive relief only and for that reason was not removable (*id.* at 848-849). But the fact is, as the Court of Appeals felt "compelled to note", that "there were pending at the time of the denial of remand two

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[9] *International Nikoh Corp.* v. *H.K. Porter Co.,* 358 F. 2d 284, 290 (C.A. 7); 6 Moore's Federal Practice 1208 (2d ed. 1966).

[10] *Byrnes Express & Trucking Co.* v. *Drivers Local Union 816,* 56 CCH Lab. Cas. ¶ 12,307, p. 20,335 (E.D.N.Y., Nov. 27, 1967).

separate actions for damages brought by the plaintiff against the defendants here" (*id.* at 849). Both were filed in the District Court on November 4, 1963 (*id.* at 849, n. 26), the same day that defendants removed the state action for injunctive relief which had been filed on November 1 (224 F. Supp. at 987). Accordingly, there was pending in the federal district court the removed injunction action and the two original damage actions all arising from the same operative events. To support remand of the injunction action, notwithstanding its plain purpose to seek both money damages and an injunction, the plaintiff amended its complaint to add the following paragraph to the prayer for relief (*id.* at 988):

> Plaintiff, by this Complaint, solely seeks injunctive relief and Plaintiff expressly foregoes and releases *in this suit and for the purpose of this suit alone,* any claim or demand for damages or money judgment, which this Court may order under its power and authority incidental to its equitable jurisdiction. [Emphasis supplied.]

But this was game-playing. Plaintiff had a single claim for which it sought both injunctive relief and money damages. It bifurcated its claim, invoking the power of the federal district court to decide the claim for the purpose of securing money damages, and separately invoking the supposed power of the state court to decide the same claim for the purpose of securing injunctive relief. But there was at all times only one claim, and that was for contract violation. A single claim is not multipliable by the number of different forms of relief available to redress the one wrong. *American Fire & Casualty Co.* v. *Finn,* 341

U.S. 6; *cf., U.M.W.* v. *Gibbs,* 383 U.S. 715, 721-725.[11] The federal district court thus had power to decide the claim of contract violation. That was the very power that plaintiff invoked when it sought money damages based on that claim. The federal district court therefore had subject matter jurisdiction, and nonetheless so because a strike injunction was not part of its arsenal of remedies. Questions of jurisdiction and removal should not be decided by or depend on the sleight of hand of dividing a single action into two segments, bringing one part into a federal court to secure money damages and another part into a state court to secure a strike injunction. A party cannot "restrict the court's jurisdiction arising out of the same set of facts by merely choosing to request a form of relief which is not available." *Oman Construction Co.* v. *Teamsters Local 327,* 263 F. Supp. 181 (M.D. Tenn.).

In short, as the District Court correctly observed in *American Dredging,* the argument that the federal court lacks jurisdiction fails to distinguish between subject matter jurisdiction and equity jurisdiction; the federal court "does have jurisdiction of this action for violation of the collective bargaining agreement between the parties"; and this "jurisdiction cannot be divested by the artifice of the plaintiff in limiting its claim to the single form of relief which § 4 of the Norris-LaGuardia Act presently precludes." 224 F. Supp. at 988-989. "The jurisdiction" of a federal

[11] See also, *Wittstein* v. *American Federation of Musicians,* 56 CCH Lab. Cas. ¶ 12,295, p. 20,295 (S.D.N.Y., Nov. 28, 1967), and cases cited. As expressed by the District Court, "a single wrong gives rise only to a single cause of action regardless of the fact that the complaint is fractured into multiple counts" (R. 20, n. 3).

court "does not depend on the ingenuity of the form of a complaint in equity." *Food Fair Stores* v. *Retail Clerks District Council,* 229 F. Supp. 123, 127 (E.D. Pa.).

**2. The Norris-LaGuardia Act fits the distinction between subject matter and equity jurisdiction to perfection**

The argument that a federal district court is without "original jurisdiction," thus precluding removal, rests of course upon the proposition that the limitations imposed by the Norris-LaGuardia Act in terms of "jurisdiction" divest the court of power over the subject matter. But the argument is simplistic in its disregard of the traditional distinction between subject matter jurisdiction and equity jurisdiction which the Norris-LaGuardia Act fits to perfection. An analysis of the terms, content and structure of the Norris-LaGuardia Act shows clearly that its restrictions pertain, not to the power of the court to entertain the controversy, but to the manner in which its power shall be exercised. "Although each of the Act's inhibitions is framed as a denial of 'jurisdiction' to issue an injunctive order of the forbidden sort or in the forbidden circumstances, each inhibition necessarily assumes the existence of a 'case' of which the court has jurisdiction and which it must, and has power to, adjudicate in accordance with the standards the Act imposes." *Crestwood Dairy* v. *Kelley,* 222 F. Supp. 614, 615 (E.D.N.Y.). The Norris-LaGuardia Act is operative therefore, not as a denial of subject matter jurisdiction, but "as a restriction on exercises of the federal equity jurisdiction. . . ." *Id.* at 617. Accord, *Publishers' Association* v. *Printing Pressmen's Union,* 246 F. Supp. 293, 295, 296 (S.D.N.Y.).

The title of the Norris-LaGuardia Act is instructive.[12] It is an act "To amend the Judicial Code and to define and limit the jurisdiction of courts *sitting in equity, and for other purposes*" (emphasis supplied). The definition and limitation of jurisdiction is thus in terms related to "courts *sitting in equity,*" a classic referent to equity jurisdiction, and the extension of the Act to "other purposes" refers to the substantive as well as procedural reforms that the Act accomplishes. The succeeding enacting clause confirms the title. Power to issue injunctions exists, so long as the grant is in "strict conformity with the provisions of this act" and not "contrary to the public policy declared in this act."

The public policy which section 2 of the Norris-LaGuardia Act declares, and which is the avowed underpinning for its interpretation and the determination of the scope of its limitations, is substantive labor policy framed in terms virtually identical with those later incorporated in the National Labor Relations Act. The definition of a labor dispute in section 13(c) of the Norris-LaGuardia Act, extending its bounds beyond disputants standing "in the proximate relation of employer and employee", mirrors the public policy declared in section 2 (*United States* v. *Hutcheson,* 312 U.S. 219, 231), and is integral as well to the National Labor Relations Act (*Phelps Dodge Corp.* v. *N.L.R.B.,* 313 U.S. 177, 192). Apart from its declaration of labor policy, the Norris-LaGuardia Act is frankly substantive in its outlawry of the yellow dog contract (§ 3), and in its prescription of standards for imposing

[12] The full text of the Norris-LaGuardia Act is set out in the Appendix, *infra,* pp. 73-80.

vicarious responsibility (§ 6; *U.M.W.* v. *Gibbs,* 383 U.S. 715, 735-737).[13]

Furthermore, the safeguards with which the Norris-LaGuardia Act surrounds the grant of injunctive relief entwine purely procedural reform, traditional equity practice, and substantive considerations of sound labor policy (§§ 7-9). Thus, on the purely procedural side, an adequate bond is required (§ 7) and findings of fact must be made (§9); on the traditional equity side, "substantial and irreparable injury" must be shown (§ 7(b)), as well as the absence of an "adequate remedy at law" (§ 7(d)); and on the substantive side, a precondition to injunctive relief is the exhaustion of "every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration" (§ 8), a requirement designed to encourage recourse to "negotiation, mediation, and arbitration for the adjustment of labor disputes" (*Brotherhood of Railroad Trainmen* v. *Toledo, Peoria & Western Railroad,* 321 U.S. 50, 58-59). An expedited appeal is provided in the event an injunction is issued or denied (§ 10); a jury trial is afforded to adjudicate charges of civil or criminal contempt[14] (§ 11, now 18 U.S.C.

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[13] Section 301(e) of the Labor Management Relations Act displaces section 6 of the Norris-LaGuardia Act in § 301 actions. *Sinclair Refining Co.* v. *Atkinson,* 370 U.S. 195, 204, and n. 17, 207-208.

[14] Section 11 of the Senate bill which became the Norris-LaGuardia Act provided for a jury trial in all cases of contempt, civil or criminal, without limitation to labor disputes. 75 Cong. Rec. 4761. The House bill was limited to criminal contempts arising out of labor disputes within the purview of the Norris-LaGuardia Act. 75 Cong. Rec. 5509. In conference the difference was resolved by providing that section 11 would cover both civil and criminal contempt but would be limited to cases arising under the Norris-LaGuardia Act. 75 Cong. Rec. 6450, 6453, 6337.

§ 3692); and provision is made for recusing the judge (§ 12).

Section 4 of the Norris-LaGuardia Act defines certain acts which the court shall not enjoin, notably "ceasing or refusing to perform any work or to remain in any relation of employment" (§ 4(a)). But the description of nonenjoinable conduct is carefully qualified. Aiding any plaintiff or defendant in a labor-affected state or federal judicial proceeding is not enjoinable if the assistance is rendered by "lawful means" (§ 4(d)). Publicizing a labor dispute is not enjoinable if the method employed is one "not involving fraud or violence" (§ 4(e)). Assembling is not enjoinable if it is conducted "peaceably" (§ 4(f)). And inducing the performance of nonenjoinable acts is itself nonenjoinable if the importunity is "without fraud or violence" (§ 4(h)).

The entirety of the Norris-LaGuardian Act therefore bespeaks, not divestiture of power to entertain the controversy, but circumscription of the manner that the power shall be exercised. The plaintiff is turned out, not because the subject matter of the controversy is not within the court's competence, but because the plaintiff has failed to satisfy the prerequisites to the grant of relief. As this Court has said, the Norris-LaGuardia Act "did not entirely abolish judicial power to impose previous restraints in labor controversies. But its prime purpose was to restrict the federal equity power in such matters within greatly narrower limits than it had come to occupy. It sought to make injunction a last line of defense. . . . " *Brotherhood of Railroad Trainmen* v. *Toledo, Peoria & Western Railroad*, 321 U.S. 50, 58-59. The unavailability of injunctive relief does not mean that a plaintiff "is left without

remedy. Other means of protection remain. Suits for recovery of damages still may be brought in the federal courts, . . . [and other relief may be available in the federal court. The plaintiff's failure to satisfy the prerequisites for injunctive relief prescribed by the Norris-LaGuardia Act has therefore] not left it without legal protection. That failure has deprived it merely of one form of remedy which the Congress, exercising its plenary control over the jurisdiction of the federal courts, has seen fit to withhold." *Id.* at 63-64.

In short, in speaking of jurisdiction, every line of the Norris-LaGuardia Act, with complete fidelity to its terms, purpose, and history, is fully and naturally explicable as a restriction on the court's equity jurisdiction, with no need to reach subject matter jurisdiction.[15] Limitation of the exercise of equity jurisdiction is the legislative refrain. The bill which became the Norris-LaGuardia Act "does not undertake to withdraw from the Federal judiciary any of its functions in equity, but it merely imposes conditions upon them and restraints upon them with reference to the issuance of injunctions in labor disputes" (75 Cong. Rec. 5465, Congressman Bankhead); "I dislike very much to find it necessary to curb the ancient and honorable power of our equity courts. Yet we must realize

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[15] The distinction is indeed expressed in the three questions presented in *Brotherhood of Railroad Trainmen* v. *Toledo, Peoria & Western Railroad*, 321 U.S. 50, 54-55, only the last of which this Court decided (*id.* at 55). The first question went to the court's power to entertain the controversy, "since there is no claim of diversity of citizenship and, it is said, no federal question is involved" (*id.* at 54). The second and third questions went to satisfaction of prerequisites to injunctive relief prescribed by the Norris-LaGuardia Act (*id.* at 54-55), and therefore pertained merely to the court's exercise of equity jurisdiction.

that it is sometimes essential to provide against the human frailties of possible well-meaning judges, and let us not forget that we are dealing entirely with the jurisdiction in equity, and are not imposing any limitation on the law side of the court" (75 Cong. Rec. 5464, Congressman Michener); "This bill simply corrects the abuses of the administration of the equity powers of the Federal courts" (75 Cong. Rec. 5493, Congressman Garber); "There is no effort . . . in any wise to affect—far less to reduce or destroy, the just jurisdiction of the courts in full exercise of the equity power which is vested in the Federal Courts by the Constitution of the United States. The effort here is to guide the exercise of the power . . . " (75 Cong. Rec. 4754, Senator Lewis); and so, "Congress having the power to establish, and confer jurisdiction upon, the courts in question, it cannot be questioned that it has the power to restrict or curtail the exercise of their powers, as proposed in this bill" (H. Rep. No. 669, 72d Cong., 1st Sess., 3). As explained in the memorandum attached to the House Report, authored by then Professor Felix Frankfurter, by the enactment of the Norris-LaGuardia Act Congress would be exercising its power "over *equity jurisdiction* of the federal courts." *Id.* at 12, and *passim* 12-16 (emphasis supplied).

Thus, Congress did not withdraw subject matter jurisdiction but limited the exercise of equity jurisdiction. As this Court has stated, speaking through Mr. Justice Frankfurter, when the Norris-LaGuardia Act is interposed as an objection to the grant of injunctive relief in a federal district court, "the question is whether the complaint subjects that court to the limitations imposed by the Norris-LaGuardia Act upon its *equity jurisdiction.*" *Bakery Sales Drivers*

*Union* v. *Wagshal,* 333 U.S. 437, 439 (emphasis supplied).

**3. Other statutes, at least as peremptory as the Norris-LaGuardia Act, have been related to equity jurisdiction**

To relate the Norris-LaGuardia Act to equity jurisdiction is faithful to this Court's treatment of other statutes in which the limiting command addressed to the federal court is at least as peremptory as the Norris-LaGuardia Act. Thus, in construing the requirement that the "writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a state . . . " (28 U.S.C. § 379 (1928), now 28 U.S.C. § 2283 (1948)), this Court held that it "is not a jurisdictional statute . . . . It merely limits their [the federal district courts'] general equity powers in respect to the grant of a particular form of equitable relief; that is, it prevents them from granting relief by way of injunction in the cases included within its inhibitions. In short, it goes merely to the question of equity in the particular bill." *Smith* v. *Apple,* 264 U.S. 274, 278-279.

Similarly, while "Section 267 of the Judicial Code, U.S.C.A. title 28, § 384, forbids the maintenance of suits in equity in the courts of the United States 'in any case where a plain, adequate and complete remedy may be had at law' ", this bar "is strictly not a question of jurisdiction in the sense of the power of a federal court to act. It is a question only of the merits; whether the case is one for the peculiar type of relief which a court of equity is competent to give." *DiGiovanni* v. *Camden Fire Ins. Co.,* 296 U.S. 64, 69. The "issue is not one of jurisdiction but of the need and propriety of equitable relief. . . . " *Atlas Insurance Co.* v. *W. I. Southern, Inc.,* 306 U.S. 563, 570.

it has no merit, as well as to decide that it has. In the words of Mr. Justice Holmes, '. . . if the plaintiff really makes a substantial claim under an act of Congress there is jurisdiction whether the claim ultimately be held good or bad.' The Fair v. Kohler Die & S. Co., 228 U.S. 22, 25. Even a patently frivolous complaint might be sufficient to confer power to make a final decision that it is of that nature, binding as res judicata on the parties."

Fourth, in light of the points just noted, *Atkinson* also indicates that the federal district courts have original jurisdiction over a complaint based on the claim that a union has breached a no-strike clause in which only an injunction is sought. That the relief explicitly sought in such a complaint must be denied is traceable to the fact that the court does not have equitable jurisdiction to afford the plaintiff that remedy. The lack of equitable jurisdiction, however, does not mean that the court in question lacks original jurisdiction over the suit. As this court stated in *DiGiovanni v. Camden Fire Insurance Association*, 296 U.S. 64, 69 (1935):

"Whether a suitor is entitled to equitable relief in the federal courts, other jurisdictional requirements being satisfied, is strictly not a question of jurisdiction in the sense of the power of a federal court to act. It is a question only of the merits; whether the case is one for the peculiar type of relief which a court of equity is competent to give." *See also, e.g., Venner* v. *Great Northern Ry. Co.*, 209 U.S. 24, 35 (1908); *Pusey & Jones v. Hanssen*, 261 U.S. 491, 498, 500 (1923).

The Federal Rules of Civil Procedure are premised on the basic concept enunciated in *DiGiovanni*. Rule 2 states that "there shall be one form of action to be known as 'civil action' " and Rule 54(c) states ". . . every final judgment shall grant the relief to which the party in whose favor it is entitled even if the party has not demanded such relief in his pleading." Both of these rules are based on the gen-

eral proposition that it is the basic claim that controls for purposes of subject-matter jurisdiction and not distinctions based on the common law forms of action, the historical division of law and equity, or ingenious attempts to split a single claim into a number of causes of action. And, of course, it is the federal conception of the nature of a claim, the proper dimension of a lawsuit, and equitable and subject-matter jurisdiction, and not the vagaries of state law that control in determining when removal is proper. For in *Shamrock Oil & Gas Co. v. Sheets*, 313 U.S. 100, 104 (1940), the Court noted:

> "[A]t the outset it is to be noted that decision turns on the meaning of the removal statute and not upon the characterization of the suit or the parties to it by state statutes or decisions. Mason City & Ft. Dodge R. Co. v. Boynton, 204, U.S. 570, 27 S. Ct. 321. The removal statute, which is nationwide in its operation, was intended to be uniform in its application, unaffected by local law definition or characterization of the subject matter to which it is to be applied. Hence the Act of Congress must be construed as setting up its own criteria, irrespective of local law, for determining in what instances suits are to be removed from the state to the federal courts."

Fifth, our argument thus far is based on the proposition that the result reached in *Sinclair* does not deprive the federal district courts of original jurisdiction, that it goes only to equitable jurisdiction, and that the latter is a far different and far more limited concept than the former. This argument faithfully reflects the Congressional intention embodied in Norris-LaGuardia. There is no indication that in using jurisdictional language in that statute Congress wished to withdraw subject-matter jurisdiction; indeed, the title of the statute refers to the jurisdiction of courts "sitting in equity" a common method of refering to the principles of equitable jurisdiction. As Congressman

Bankhead stated "[We do] not undertake to withdraw from the Federal judiciary any of its functions in equity but merely [to] impose conditions upon them and restraints upon them with reference to the issuance of injunctions in labor disputes." 75 Cong. Rec. 5465. And the overall focus of Norris-LaGuardia is plainly not on original jurisdiction for, as *Atkinson* demonstrates, it does not affect damage suits and it combines provisions dealing with substantive policy, for example Section 6, *see Mine Workers* v. *Gibbs*, 383 U.S. 715, 735-737 (1965), and provisions providing for procedural reforms concerning traditional equity practice, *see* Sections 7-9. Thus, as Professor Chafee concluded after considering this problem thoroughly, the term "jurisdiction" in Norris-LaGuardia refers to equitable jurisdiction, i.e. to "right principles of judicial action and not to power." Chaffee, Some Problems of Equity 372 (1950); *compare e.g. Smith v. Apple*, 264 U.S. 274, 278-279 (1924); *McCormick* v. *Sullivant*, 10 Wheat 192 (1825).

Sixth, our argument here is completely consistent with the overall purpose of the removal statute. In *Zwickler* v. *Koota*, —— U.S. ——, 36 U.S. Law Week 4041, 4042-4043 (December 5, 1967), this Court explained the function of the United States' District Courts' original jurisdiction over federal question litigation in the following terms:

> "During most of the Nation's first century, Congress relied on the state courts to vindicate essential rights arising under the Constitution and federal laws. The only exception was the 25th section of the Judiciary Act of 1789 providing for review in this Court when a claim of federal right was denied by a state court. But that policy was completely altered after the Civil War when nationalism dominated political thought and brought with it congressional investiture of the federal judiciary with enormously increased powers. The Act of March 3, 1875 was the principal '. . . measure of the broadening federal domain in the area of individual rights,' McNeese v. Board of Education, 373 U.S. 668,

> 673. By that statute . . . Congress gave the federal courts the vast range of power which had lain dormant in the Constitution since 1789. These courts ceased to be restrictive tribunals of fair dealing between citizens of different states and became the primary and powerful reliances for vindicating every right given by the Constitution, the laws, and treaties of the United States."

The jurisdictional language of the removal statute is identical to that of 28 U.S.C. §§ 1331 and 1337, the Sections governing federal question litigation. These Sections in turn stem from the same Constitutional base, Art. III, Sec. 2, cl. 1, as does Section 301. And it is well settled that the removal statute is to be construed as referring to "the same class of cases covered" by the general federal question jurisdiction 1 Barron & Holtzoff, *supra,* § 102 p. 468. In light of the interrelation of these provisions, the overall Congressional purpose they evince is clearly to insure that no federal question case is tried in a state court *unless both parties wish to have it tried there.* The removal statute provides the insurance necessary to vindicate the primary position of the federal courts in federal question litigation.

2. The primary thrust of the Petitioner's argument here is not directed toward an elucidation of the jurisdictional principles which control the question upon which this case actually turns. Instead the Petitioner attempts to overcome these principles by main force and to turn this case into one in which the decisive considerations are matters of labor policy. It argues that Congress viewed the state court injunction as one of the primary remedial devices to insure the enforceability of no-strike provisions and that for this reason, given *Sinclair,* removal should be denied (Pet. Br. 8-32). There are two insurmountable objections to this argument.

The first is that there is simply no evidence that Congress viewed the injunction as a favored method for enforcing

would be at the instance of private parties rather than at the instance of the Labor Board, no change in the existing anti-injunction provisions of the Norris-LaGuardia Act should be made. The House Conference Report expressly recognized that the House provision for repeal in contract actions of the anti-injunction prohibitions of the Norris-LaGuardia Act had been eliminated in Conference.

The Court's ultimate conclusion from that history and from the language of Section 301 was that (370 U.S. at 213-214):

> "Obedience to the congressional commands of the Norris-LaGuardia Act does not directly affect the 'congressional policy in favor of the enforcement of agreements to arbitrate grievance disputes' at all for it does not impair the right of an employer to obtain an order compelling arbitration of any dispute that may have been made arbitrable by the provisions of an effective collective bargaining agreement. At the most, what is involved is the question of whether the employer is to be allowed to enjoy the benefits of an injunction along with the right which Congress gave him in § 301 to sue for breach of a collective agreement."

Thus the Employers' policy argument on removal comes down to this: it is plain from *Lincoln Mills* that Congress wished to subject the enforcement of collective bargaining agreements to a federal regime; it is also plain from *Sinclair* that Congress incorporated as part and parcel of the governing federal law the restraints on injunctive relief provided by Norris-LaGuardia; nevertheless Congress should be deemed to have considered injunctive relief against strikes allegedly in breach of contract so central to labor policy that the normal jurisdictional principles which govern removal should be ignored, or in the alternative overriden, in order to facilitate efforts to obtain such injunctions. With all due respect we submit that to state the argument is to refute it.

Second, the Petitioner's arguments (Pet. Br. 33-49) which deal with the jurisdictional principles which are germane here are no stronger than those it employed in the attempt to suggest that those principles should be overriden because of its conception of labor policy. The argument that a suit based on a claim that there has been a breach-of-contract-strike does not arise under federal law is squarely contrary to *Lincoln Mills* and *Atkinson*. And the argument that such a suit is not within the original jurisdiction of the federal district courts is the result of a failure to observe the well settled distinction between subject matter jurisdiction, which is a concept going to the nature of the basic claim, and equitable jurisdiction, which is a concept going to the merits, *see* pp. 4-8 *supra*.

Indeed it is fair to say that the Petitioner's position, insofar as it is not limited to a reliance on labor policy, must be deemed to rest on the proposition that removal should be denied if the defendant seeks and gains an advantage by removing a case that the plaintiff wished to deny him by filing the suit in state court. Under this theory removal would likewise have to be denied in all non-labor cases brought in state courts in which the limitations on the issuance of injunctions are less severe than those set forth in Rule 65 of the Federal Rules. Removal would also have to be denied if the defendant wished to take advantage of the generally more liberal processes of discovery available in the federal courts. Examples could be multiplied indefinitely for we take it as a datum that removal is normally sought in order to gain a legal advantage. Thus, insofar as the Petitioner here relies on a general principle, it is one that goes far toward gutting the removal jurisdiction.

3. The instant case is important in itself. In addition, however, it has ramifications which can only be appreciated by placing it in historical perspective. For the history of labor relations in this country teaches that the labor in-

junction became a symbol of industrial oppression because its growth was the product of the opportunistic manipulation and distortion of general equity principles. This point is emphasized again and again in Frankfurter and Green, The Labor Injunction (1930), the classic study in the field. As a basis for the conclusions they reached, Frankfurter and Green considered the workings of the central mechanism of labor injunction practice—the Bill of Complaint, the use of Affidavits, and the scope of the restraining clauses in the Injunctions which were issued. As to each, the evidence they assembled demonstrates how equity practice was deformed in the service of what were believed to be overriding policy considerations.

Thus as to the Bill of Complaint, Frankfurter and Green note (*Id.* at 63-64):

> "We shall not weary the reader with samples of complaints used in New York and Massachusetts. Always and everywhere the badges of illegality are the same. They are transcribed almost verbatim from case to case. The allegations in a bill of equity which have proved sufficient to evoke injunction are as perfunctorily dictated as the statement of a cause of action for money had and received. Seldom, however, is judicial protest voiced against such practice."

In reviewing the use of Affidavits they state (*Id.* at 68, 71):

> "The most serious complaint that can be made against injunctions, which have become so prominent a part of the law in dealing with strikes in the United States,' according to Judge Amidon, 'is the fact that courts have become accustomed to deciding the most important questions of fact, often involving the citizen's liberty, upon this wholly untrustworthy class of proof.

* * *

> "*Arnheim* v. *Hillman* was an injunction proceeding against the Amalgamated Clothing Workers of America . . . The array of affidavits mustered by both sides

was unusually imposing; fifty-two for the complainant and fifty-four for the defendants. Each sworn allegation and every specified incident of disorder were controverted by detailed denial, sworn to with equal solemnity. A preliminary injunction *pendente lite* was denied at *nisi prius;* on appeal an injunction was ordered."

Finally as to the nature of the restraining clauses included in such Injunctions they report (*Id.* at 87-88):

"The federal courts have given the labor injunction its farthest reach of application. In the *Debs Case,* the famous 'omnibus' injunction was issued against the defendants, 'and all persons combining and conspiring with them and all other persons whomsoever.' An even earlier decree ran against 'all persons generally.' When the phrasing of the Debs injunction was still warm, Mr. Dunbar, a conservative leader of the Bar, protested against it: 'If the course there followed can be supported, the principles of equity jurisprudence have received an important extension which may render "government by injunction" more than a mere epithet.' Later decrees have followed and extended the early models, bringing within the area of potential contempt the conduct of all undefined persons who in the future might threaten or encourage or commit violation of the ambiguous schedule of forbidden acts.

* * *

"Injunctions have issued against strikes and against the payment of strike benefits. Union officials have been restrained from calling or instigating strikes, from rendering assistance to strikers or workmen about to go on strike, and have been commanded to call off an effective strike. Strikers have been enjoined from all persuasion, from peaceful patrolling, from attempts to give publicity to the facts of a dispute. Characteristic of the labor injunction throughout its wide employment by the federal courts is the use of restraining clauses of vague and harassing significance."

It is against the background provided by this history that this latest attempt to deprive unions of the benefits of

the protections of Norris-LaGuardia must be measured. For here what the Petitioners are attempting to do is to press a restrictive and artificial construction of the removal statute upon this Court so that they may be free to secure a labor injunction. It is this background that causes us to insist that the instant case should, indeed must, be viewed as one that turns on general neutral jurisdictional principles, principles that are not limited to labor law removal cases, and whose effects will not always, or normally, result in decisions which benefit labor unions, employers or any other particular class of litigants. And these principles, as we have shown, compel the conclusion that removal was proper here.

## CONCLUSION

For the above stated reasons, as well as those advanced by the Union, the decision of the court below should be affirmed.

Respectfully submitted,

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